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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JOANNE ROBLES,
Petitioner

v.

EXXON CORPORATION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROLAND B. DARBY
1500 S. Dairy Ashford
Suite 115
Houston, Texas 77077
(713) 558-1300
Attorney for Petitioner

February 1989

Alpha Law Brief Co., Inc. — 8748 Westpark — Houston, Texas 77063 — 789-2000

QUESTION PRESENTED

Whether it is proper that in only some circuits a federal district judge can use post verdict juror interviews from the bench to ascertain whether a mistaken verdict had been announced.

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The Petitioner, Joanne Robles respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on January 12, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit entered January 12, 1989 is reported and is reprinted in the appendix hereto, p. 1a, infra.

The Memorandum and Order of the United States District Court for the Southern District of Texas, dated May 17, 1988, and the Final Judgment dated June 1, 1988 is reprinted in the appendix hereto at App. B and C respectively.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on January 12, 1989 reversing the district court judgment for Petitioner and rendered that she take nothing. The Fifth Circuit admits that it is in irreconcilible conflict with other circuit holdings with respect to jury interviews. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RULE INVOLVED

Fed. R. Evid. 606(b), 28 U.S.C.A. *Inquiry into validity of verdict or indictment.*

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

STATEMENT OF THE CASE

Petitioner sued Respondent for injuries suffered when she slipped and fell at one of Exxon's service stations. Jurisdiction of the federal district court was invoked under 28 U.S.C. § 1332 because of diversity of citizenship between the parties.

After both parties presented their evidence the trial Judge instructed the jury on Robles' negligence in accordance with Texas law. When the jury returned, their verdict was accepted and they were discharged momentarily. The Court noted in its Memorandum & Order, p. 20a infra, that when he advised the jury that because of their findings Petitioners would not recover, all six jurors looked astonished but did not immediately voice their confusion. The judge after discharge of the jury retired with counsel to chambers. Within two or three minutes the marshal informed the judge in chambers that the entire jury wished to speak with the Court.

The court immediately called the jurors back into the courtroom and conducted a brief interview, and determined that all six jurors believed the Court would determine the amount of damages if they answered the questions a certain way because they were having difficulty at agreeing on a dollar amount (R. pp. 27, 28). The jurors were at all times *unanimous* in this regard and the Court having attempted to ascertain the juror's confusion resubmitted a blank set of special interrogatories to the jury and requested that they answer all the interrogatories that they cared to answer again.

While the jury deliberated the Court conducted a short hearing with the bailiff and determined that the jury had

not separated or spoken with any outside parties during the brief interval after returning the first special verdict.

The Court accepted the corrected verdict and entered judgment for the Petitioner in accordance with the unanimous verdict (Appendix p. 17a).

Respondent appealed and the Fifth Circuit reversed and rendered that the colloquy with the jury was impermissible under Rule 606(b) of the Federal Rules of Evidence, as had been previously decided by the Court in *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987).

It should be emphasized however that the Circuit Judge Jerry E. Smith in his opinion admitted that the Fifth Circuit's holding in *Peveto* "stands in stark contrast to the result reached by another circuit in a factually similar case, *Attridge v. Cencorp Div. of Dover Technologies Int'l Inc.*, 836 F.2d 113 (2d Cir. 1987)" and further stated that "*Peveto* and *Attridge* are irreconcilable." In short the cases are indistinguishable and are in direct conflict with one another.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit stated in footnote 5 of its opinion (p. 11a) that its holding is in irreconcilable conflict with the holding in other circuit courts thus making the law different in different geographical locales.

Trial judges should have some latitude in determining the truth of the jury's verdict particularly in light of the unanimity in the instant case.

Federal Rules of Evidence Rule 606(b) was never meant to allow anything but the true intent of the jury

to prevail. If the jury unanimously intended a verdict different from the one announced and the trial Court on its on impetus ascertains this fact seconds after the jury's erroneous utterance, logic dictates an expedient remedy rather than the granting of new trials and further extensive litigation.

In some circuits Rule 606(b) does not extend by its own terms to jury testimony on the veracity of a verdict. The simple correction of a clear miscommunication between judge and jury is permissible in some jurisdictions and not in others. This is unacceptable and this Court should grant certiorari to provide guidance to trial judges throughout the United States. Compare *Continental Baking Co. v. Old Homestead Bread Co.*, 476 F.2d 97, 109-110 (10th Cir. 1973); *Young v. United States*, 163 F.2d 187, 189 (10th Cir.), 332 U.S. 770, 68 S. Ct. 83, 92 L.Ed. 355 (1947).

This conflict in the circuits affects all trials and trial judges in the administration of justice daily and should be clarified to allow judges to have a colloquy with jurors without fear and with truth being the goal. Surely the *unanimity* of the jury on all aspects should not be disregarded and inquiry should not be prevented in only some circuits.

CONCLUSION

For the above stated reasons, this petition for certiorari should be granted. Petitioner requests that this Court decide that *Attridge v. Cencorp* correctly interprets Rule

606(b) and that the Fifth Circuit's holding herein be reversed.

Respectfully submitted,

ROLAND B. DARBY
1500 S. Dairy Ashford
Suite 115
Houston, Texas 77077
(713) 558-1300

Attorney for Petitioner

February 1989

APPENDIX A

Joanne ROBLES, Plaintiff-Appellee,

v.

EXXON CORPORATION,
Defendant-Appellant.

No. 88-2590

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Jan. 12, 1989.

Plaintiff sued oil company for injuries suffered when she slipped and fell at one of the oil company's service stations. The United States District Court for the Southern District of Texas, Woodrow B. Seals, J., entered judgment in favor of plaintiff, and defendant appealed. The Court of Appeals, Jerry E. Smith, Circuit Judge, held that: (1) district court erred by refusing to enter judgment on first verdict in favor of defendant on ground that juror testimony, received after jury had rendered its verdict, indicated that jury's answers to special interrogatories were the result of jury's failure to understand instructions, and (2) jurors' postverdict testimony was barred by evidence rule prohibiting receiving testimony from jurors regarding their thought processes after they have returned their verdict.

Reversed and rendered.

JERRY E. SMITH, Circuit Judge:

This is a tale of two verdicts. The district court refused to enter judgment for the defendant, Exxon Corporation ("Exxon"), on the first verdict on the ground that juror testimony, received after the jury had rendered its verdict, indicated that the jury's answers to two special interrogatories were the result of the jury's failure to understand the court's instructions. Instead, the court ordered the jury to resume its deliberations. After the jury returned a second verdict, this time in favor of the plaintiff, Joanne Robles, the court entered judgment for her. Because we conclude that the district court erred by (1) refusing to enter judgment on the first verdict and (2) hearing the jurors' post-verdict testimony regarding their thought processes, we reverse and render.

I.

The relevant facts are not in dispute. Robles sued Exxon for injuries suffered when she slipped and fell at one of Exxon's service stations. After both parties had presented their evidence, the district court, without objection from either party, instructed the jury on Robles' negligence claim. In accordance with Texas law,[1] the district court twice specifically told the jury that if it

1. Under Tex. Civ. Prac. & Rem. Code § 33.001(a) (Vernon Supp. 1989),

> [i] an action to recover damages for negligence resulting in personal injury . . . a claimant may recover damages only if his percentage of responsibility is less than or equal to 50 percent.

Section 33.012(a) in turn provides that

> [i]f the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

found that Robles, on account of her own negligence, was more than 50% responsible for her injuries, she would be barred from recovering any damages from Exxon.[2]

The district court then gave the jury six special interrogatories. The first four interrogatories asked whether (1) Exxon was negligent; (2) Exxon's negligence was a proximate cause of Robles's injuries; (3) Robles was negligent; and (4) Robles's negligence was a cause of her injuries. In Interrogatory No. 5, the jury was requested to write down the parties' relative percentages of fault, with Robles's percentage to be entered on line (a) and Exxon's on line (b). After reading Interrogatory No. 5, to the jury, the court specifically instructed the jury that

> [i]f you answer 5(a) [regarding Robles' percentage of fault] in the percentage of 50 percent or less,

---

2. The court's charge read, in pertinent part:

> If you find that a preponderance of the evidence supports the plaintiff's claim, and if you find in favor of the defendants [sic] on its defenses, this will not prevent recovery by the plaintiff. It only reduces the amount of plaintiff's recovery, unless you find plaintiff was more than 50 percent responsible for her own damages. In other words, if you find that the accident was done partly—let me read that again.
>
> In other words, if you find that the accident was due partly to the fault of the plaintiff, that her own negligence was, for example, 10 percent responsible for her own damage, then you will fill in that percentage as your finding on the special verdicts I will explain to you in a moment. Such a finding, unless greater than 50 percent, will not prevent the plaintiff from recovering. The court will merely reduce the plaintiff's total damages by the percentage you insert.

Neither party objected to these instructions as being confusing or otherwise incorrect at the time they were given. Indeed, when the district court asked the jury to resume its deliberations, it was content to send the jury back to the jury room without expanding upon or even rereading its instructions from the day before.

> answer special interrogatory number 6. Otherwise, do not answer special interrogatory number 6.

Finally, Interrogatory No. 6 asked the jury to determine the sum of money that would compensate Robles for her injuries. The special interrogatory form in hand, the jury retired to deliberate.

When the jury returned, the jury forewoman indicated that the jury had unanimously answered all of the questions which it cared to answer. Upon inquiry from the court, all of the jurors nodded their heads in agreement. The jury's answers to the special interrogatories indicated that it found that both Exxon and Robles were negligent, and that each party's negligence was a proximate cause of Robles's injuries. In response to Interrogatory No. 5, the jury found Robles 51% responsible for her injuries and Exxon only 49% responsible. In accordance with its instructions, the jury did not answer Interrogatory No. 6 regarding damages. Upon receiving this verdict, the court, before discharging the jury, observed that the jury's verdict meant that Robles would take nothing.

After discharging the jury, the judge retired with counsel to chambers. After a few moments, a marshal informed the judge that the jury forewoman thought that there was a "misunderstanding."

The court called the jurors back into the courtroom, and proceeded to elicit unsworn testimony from them regarding this "misunderstanding." The gist of their responses was that they understood the court's instructions to mean that if they found Robles more than 50% negligent, the judge, instead of the jury, would determine and award damages. According to one juror, the jury was unable to "come up with a reasonable amount to reward

[Robles] with," although it "wanted to give her some money"; it understood, however, that "if we couldn't decide [on an award] and if [the answer to Interrogatory No. 5(a)] were 51 percent or more, that you would decide from the bench whether she should be rewarded."

Although it noted that "[o]n the face of [the verdict] there is no conflict on the answers," the court decided that the jury had clearly misunderstood its instructions. Over the objection of Exxon's counsel, it instructed the jury to return and resume its deliberations the following morning. After such further deliberations, the jury found Robles to be 49% at fault and Exxon 51% at fault, and assessed damages in the amount of $85,450.00. The court accepted the verdict and entered judgment for Robles in the amount of $43,579.50 (51% of $85,-450.00). Exxon appeals, arguing that the district court erred by denying its motion for judgment on the first verdict.

II.

[1] Rule 58(2) of the Federal Rules of Civil Procedure provides that

> upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

Although the court may resubmit special interrogatories to a jury prior to discharge if the jury's original answers to the interrogatories are irreconcilably inconsistent,[3] rule

3. *See Nance v. Gulf Oil Corp.*, 817 F.2d 1176, 1178 (5th Cir. 1987); *Guidry v. Kem Mfg. Co.*, 604 F.2d 320, 321 (5th Cir. 1979), *cert. denied*, 445 U.S. 929, 100 S. Ct. 1318, 63 L.Ed.2d 763 (1980).

58(2) and the seventh amendment command that judgment be entered on the verdict if the jury's answers are clear and consistent, subject, of course, to the usual motions under rules 50 and 59 for judgment notwithstanding the verdict or a new trial. *See Nance,* 817 F.2d at 1178; *Griffin v. Matherne,* 471 F.2d 911, 915 (5th Cir. 1973) ("The Seventh Amendment requires that if there is a view of the case which makes the jury's answers consistent, the court must adopt that view and enter judgment accordingly."); 6A J. Moore, J. Lucas, & G. Grotheer, Moore's Federal Practice ¶ 58.04[3] at 58-42 (2d ed. 1984) ("By returning a special verdict the jury has found the facts and it then becomes the duty of the court to apply the law to those facts and render judgment" (footnote omitted)).

[2] As the district court itself correctly noted, there are simply no inconsistencies to be found in the jury's first set of answers to the special interrogatories. The jury found—by its own indication, unanimously—that both parties were negligent, that both parties' negligence was the proximate cause of Robles's injuries, and that Robles was 51% responsible and Exxon 49% responsible. As it was instructed, the jury did not answer the last interrogatory on damages, as it had already found Robles more than 50% at fault. From the face of the special verdict form, there is no indication that the jury did anything other than follow its instructions to the letter and answer the special interrogatories, which were put to it in a clear and consistent manner. Under rule 58, therefore, the district court should have entered a judgment on the verdict in favor of Exxon.

III.

[3] The district court concluded, however, that resubmission of the interrogatories to the jury even after it was discharged was nonetheless proper because the post-verdict testimony from the jurors indicated that "[e]ach juror misunderstood the effect of his or her responses to Special Interrogatories 5 and 6." Although we acknowledge the district court's good intentions, we are compelled to disagree, because the method by which the court ascertained that the jury had misunderstood its instructions —receiving testimony from the jurors themselves after they had returned their verdict—is without question prohibited by the Federal Rules of Evidence.

Rule 606(b) provides that

> [u]pon an inquiry into the validity of a verdict . . . a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict . . . or concerning the juror's mental proesses in connection therewith. . . .[4]

As the Advisory Committee's notes accompanying the rule indicate, the "central focus" of the federal decisions on which the rule is based has been to "insulat[e] . . .

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4. The rule goes on to provide an exception to the general prohibition against juror testimony for testimony relating to "whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." Fed. R. Evid. 606(b). *See, e.g., Abell v. Potomac Ins. Co.*, 858 F.2d 1104, 1143-47 (5th Cir. 1988) (attempted bribery of jury). Robles does not contend that either exception is applicable to the case at bar.

the manner in which the jury reach the verdict, . . . including arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process." The Committee specifically mentioned with approval that courts have held jurors incompetent to testify as to whether they or other jurors misinterpreted their instructions. *See id.* (citing *Farmers Co-op. Elevator Ass'n v. Strand,* 382 F.2d 224, 230 (8th Cir.), *cert. denied,* 389 U.S. 1014, 88 S. Ct. 589, 19 L.Ed.2d 659 (1967)).

Moreover, the legislative history of the rule unmistakably points to the conclusion that Congress made a conscious decision to disallow juror testimony as to the jurors' mental processes or fidelity to the court's instructions. *See generally Tanner v. United States,* ____U.S. ____, 107 S. Ct. 2739, 2748-50, 97 L.Ed.2d 90 (1987). After the Supreme Court adopted the present version of rule 606(b) and transmitted it to Congress, the House Judiciary Committee, noting the restrictive scope of the proposed rule, rejected it in favor of a broader formulation that would have allowed juror testimony on "objective jury misconduct" occurring at any point during the trial or the jury's deliberations. *See* H.R. Rep. No. 93-650, 93d Cong., 2d Sess. 9-10 (1973), *reprinted in* 1974 U.S. Code Cong. & Admin. News 7051, 7083. The Senate Judiciary Committee did not disagree with the House Judiciary Committee's broad interpretation of the rule proposed by the Court, but it left no uncertainty as to its views of the effects or wisdom of the House's proposed rule:

> Although forbidding the impeachment of verdicts by inquiry into the jurors' mental processes, [the

> House's proposed rule] deletes from the Supreme Court version the proscription against testimony 'as to any matter or statement occurring during the course of the jury's deliberations.' This deletion would have the effect of opening verdicts up to challenge on the basis of what happened during the jury's internal deliberations, *for example, where a juror alleged that the jury refused to follow the trial judge's instructions.* . . .
>
> Permitting an individual to attack a jury verdict based upon the jury's internal deliberations has long been recognized as unwise by the Supreme Court. . . .
>
> . . . .
>
> Public policy requires a finality to litigation. And common fairness requires that absolute privacy be preserved for jurors to engage in the full and free debate necessary to the attainment of just verdicts. Jurors will not be able to function effectively if their deliberations are to be scrutinized in post-trial litigation. In the interests of protecting the jury system and the citizens who make it work, rule 606 should not permit any inquiry into the internal deliberations of the jurors.

S. Rep. No. 93-1277, 93d Cong., 2d Sess. 13-14 (1974), *reprinted in* 1974 U.S. Code Cong. & Admin. News 7060 (emphasis added). When the competing versions of rule 606(b) went to the Conference Committee, the Committee adopted, and Congress enacted, the version of rule 606(b) originally proposed by the Court and preferred by the Senate.

Our previous cases have been faithful to the text and legislative intent of the rule as enacted by Congress. In *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987), we held that rule 606(b) forbade the considera-

tion of juror testimony regarding possible confusion on the part of the jury as to the meaning of their instructions. In *Peveto,* a case involving claims under the Texas wrongful death and survival statutes, the jury was asked to answer special interrogatories regarding the comparative fault of the parties and actual damages. At several points during the deliberations, the jury asked the court to reinstruct it regarding the effect of its answers to the comparative fault questions on the amount, if any, which the plaintiffs would recover. After having been reinstructed, the jury finally returned a verdict in which it found that the defendants were only 4% responsible for the decedent's death, with the decedent himself being 96% responsible. It also found actual damages in the amount of $100,000. After polling the jury to ensure that all jurors concurred in these figures, the court entered judgment in favor of the plaintiffs for $4,000 (4% of $100,000). *See id.* at 487-88.

Some time after the jury had been discharged, the plaintiffs' counsel sought out individual jurors and discovered that at least four of the six jurors had misunderstood their instructions and had reduced the $2,500,000 damage award requested by the plaintiffs by 96% to arrive at $100,000. The two other jurors stood by the verdict as announced. The plaintiffs' counsel sought and received a hearing on juror confusion at which all six jurors testified, but the court, although acknowledging that the jurors were "obviously" confused, refused to amend or alter the judgment to reflect what the plaintiffs termed the jury's "true verdict." *See id.* at 488.

We affirmed on the ground that the only evidence of juror confusion—the jurors' own testimony—was barred from consideration by rule 606(b). In rejecting the plain-

tiffs' argument that the court's erroneous or confusing instructions on comparative fault misled or confused the jury and thus were an "outside influence improperly brought to bear" upon the jurors, Judge Rubin wrote:

> If the court gives jurors erroneous instructions on the law in the course of normal judicial proceedings, other means of correcting discernible error are available without inquiring into the jurors' mental processes. *Of course, in the jury trial process there is always some danger that jurors will misunderstand the law* or consider improper factors in reaching their verdict, *but, by implementing Rule 606(b), Congress has made the policy decision that the social costs of such error are outweighed* by the need for finality to litigation, to protect jurors from harassment after a verdict is rendered, and to prevent the possible exploitation of disgruntled ex-jurors.

Id. at 489 (emphasis added).[5] *See also Smallwood v. Pearl Brewing Co.*, 489 F.2d 579, 602 n. 30 (5th Cir.)

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5. Our holding in *Peveto* stands in stark contrast to the result reached by another circuit in a factually similar case, *Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc.*, 836 F.2d 113 (2d Cir. 1987), on which the district court below relied heavily. In *Attridge*, a comparative negligence case submitted to the jury on special interrogatories, the court held that rule 606(b) did not bar post-verdict juror testimony to the effect that the jury had already factored percentages in calculating the amount which it entered as the amount of damages. Deeming the case as involving the "correct[ion of a] mistaken transmission of the verdict from the jury," *Attridge* held that the juror testimony was admissible because it was "intended to resolve doubts regarding the accuracy of the verdict announced, and not to question the process by which those verdicts were reached." *Id.* at 117.

Admittedly, the fact that the jurors in *Attridge* were unanimous in insisting that an error had occurred made it easier for that court to characterize the case as involving a "mistaken transmission" of a verdict rather than one involving jury misinterpretation of its instructions. Our holding in *Peveto*, however, was in no way based upon the fact that the jury in that case was not unanimous in be-

("Whether or not the jury misunderstood the charge of the court is not a question to be reexamined after the verdict has been rendered."), *cert. denied*, 419 U.S. 873, 95 S. Ct. 134, 42 L.Ed.2d 113 (1974).[6] "[I]t is a peculiar facet of the jury institution that once a verdict is rendered, no judicial inquiry is permitted into the jury's deliberative process to determine if in fact the court's instructions were properly followed." *United States v. D'Angelo*, 598 F.2d 1002, 1004 (5th Cir. 1979).

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lieving that a mistake had been made. Rather, we held that because the only evidence that the jury was "confused"—in the same manner that the *Attridge* jury was "confused"—as to the meaning or application of their instructions necessarily went to the jury's "mental processes," it was forbidden by rule 606(b).

In our view, therefore, *Peveto* and *Attridge* are irreconcilable. Because *Peveto* is controlling, however, and because the district court's attempts to distinguish the two cases are unavailing, the district court erred by following the holding of another circuit in preference to our previous decision.

6. In its memorandum opinion and order, the district court attempted to distinguish *Peveto* and *Smallwood* on the grounds that (1) not all of the jurors in those cases indicated that they had misunderstood their instructions, and (2) the jurors in those cases did not indicate that they had been confused until some time had passed after the juries had been discharged. We find these distinctions unpersuasive.

Nothing in *Peveto* or *Smallwood* indicates that the decisions in these cases turned on the fact that every juror may not have been confused or that the jury had not been "tainted" in the time period after discharge; moreover, whether the categorical rule created by rule 606(b) applies to a given case simply does not turn on whether one, two, or all of the jurors indicate that they may have been confused or on when or how, after they have rendered their verdict, the jurors evidence their confusion. Rather, the applicability of rule 606(b) is determined solely by the nature of the testimony sought to be introduced: If the juror's testimony "[u]pon an inquiry into the validity of a verdict" goes to any "matter or statement" occurring during deliberations, anything "influencing the juror to assent to or dissent from the verdict," or anything "concerning the juror's mental processes," it is deemed incompetent and inadmissible unless it fits within the narrow class of exceptions outlined in the rule itself.

The fact that the jury in this case, in addition to having already rendered its verdict (which alone would trigger the application of rule 606(b)), had been discharged when the jurors' testimony was adduced is of critical importance.

The restrictions in Rule 606(b) apply only to inquiry after the verdict or indictment has been reached. . . . As Wigmore states:

> The reasons for the foregoing rule, namely, the dangers of uncertainty and of tampering with the jurors to procure testimony, disappear in large part if such investigation as may be desired is *made by the judge* and . . . takes place *before the jurors' discharge* and separation.

6 J. Weinstein & M. Berger, Weinstein's Evidence (hereinafter "Weinstein") ¶ 606[04] at 606-30 through 606-31 (1987) (quoting 8 J. Wigmore, Evidence § 2350 at 691 (McNaughton rev. 1961)) (emphasis in Wigmore).[7]

The district court was correct when it noted that we have held that rule 606(b) does not bar juror testimony as to whether the verdict delivered in open court was actually that agreed upon by the jury. *See United States v.*

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7. We note, as well, that although here the inquiry was made by the judge, there is, in any case, the undesirable possibility that once a verdict has been announced, the judge's reaction to it, despite the best of intentions, can have an improper influence on jurors if the verdict is to be reopened, as it was here:

> [T]he trial judge is a potent figure indeed. His instructions are lethal. He can communicate his attitude in a thousand ways from a cocked eyebrow to a sideways glance. Those will not be of record. They are not reviewable. Trial judges are disciplined ultimately only by their good faith and integrity and by an occasional reminder from their appellate brethren to be constantly vigilant of their power.

Perricone v. Kansas City S. Ry., 704 F.2d 1376, 1378-79 (5th Cir. 1983).

Dotson, 817 F.2d 1127, 1130 (5th Cir.), *modified on rehearing,* 821 F.2d 1034 (5th Cir. 1987); *University Computing Co. v. Lykes-Youngstown Corp.,* 504 F.2d 518, 547-48 n. 43 (5th Cir. 1974). These holdings simply embody the sound reasoning that such inquiries are not directed at the "validity" of the verdict and thus are not covered by the rule.[8] In *Dotson,* we noted that the admission of such testimony was proper to correct "a clerical error in a verdict," not its "validity" in the sense of being correct or proper, and that the cases to which this exception would apply are "few and far between." 817 F.2d at 1130.[9]

This is not such a case. The error here is not "clerical," as would be the case where the jury foreperson wrote

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8. Thus, "Rule 606(b) would not bar testimony by a juror that all the jurors agree that through inadvertence, oversight or mistake the verdict announced was not the verdict on which agreement had been reached." 6 Weinstein ¶ 606[04] at 606-40 (footnote omitted). The critical distinction is well exemplified by *McNulty v. Borden, Inc.,* 542 F.Supp. 655, 657 (E.D. Pa. 1982). There, a juror's affidavit was introduced to show that the jury believed that it was finding for the plaintiff and would have answered an interrogatory differently had it known the effect of its answer on the ultimate result. Where it was clear that the jurors had "agreed that the answer was 'No', and that was the answer given in Court . . . [,] whatever 'mistake' the jury might have made is not one it can now correct by testimony." *Id.*

9. Reading *Dotson* in conjunction with *Peveto* reveals the narrowness of the "clerical error" exception. As in *Attridge,* the jury error in *Peveto* could have been characterized as one involving the "transmission" of the verdict, insofar as it involved only erroneously-undertaken calculations, and thus as "clerical" or ministerial in nature. As noted above, however, we did not adopt this characterization. The category of "clerical" errors described in *Dotson,* therefore, can be understood to refer only to discrepancies between the verdict delivered in court and the precise verdict physically or verbally agreed to in the jury room, not to discrepancies between the verdict delivered in court and the verdict or general result which the jury testifies it "intended" to reach.

down, in response to an interrogatory, a number different from that agreed upon by the jury, or mistakenly stated that the defendant was "guilty" when the jury had actually agreed that the defendant was not guilty. Rather, the error alleged here goes to the substance of what the jury was asked to decide, necessarily implicating the jury's mental processes insofar as it questions the jury's understanding of the court's instructions and application of those instructions to the facts of the case.[10]

The testimony from one of the jurors, for example, makes this point painfully obvious. Juror Nicholas testified that the jury understood the court's instructions to mean that "if we couldn't decide [on an award] and if it [i.e., the percentage of fault attributable to Robles] were 51 percent or more, that you would decide from the bench whether she should be rewarded." The testimony on its face violates rule 606(b) because it relates to how the jury interpreted, as or juror Nicholas put it, "misinterpreted," the court's instructions, and thus unquestionably constitutes testimony as to a "juror's mental processes" that is forbidden by the rule.[11] In short, there-

10. Closely analogous is the case of *Continental Casualty Co. v. Howard*, 775 F.2d 876, 883-86 (7th Cir. 1985), *cert. denied*, 475 U.S. 1122, 106 S. Ct. 1641, 90 L.Ed.2d 186 (1986). There, the jury, in answering special interrogatories, found liability on only one of the theories of recovery presented to it. On the basis of the verdict, the district court entered judgment for $9,500. Subsequent juror affidavits indicated that the jury thought that on the basis of its verdict the plaintiff would recover $379,000. The court of appeals affirmed under rule 606(b), holding that a contrary result would impermissibly invade the "jury's thought processes." *Id.* at 886.

11. Moreover, the same testimony, when analyzed more closely, inescapably requires one to engage in exactly the sort of intrusive inquiry into the jury's deliberations which the rule and courts universally condemn. The testimony could be interpreted as meaning that the jury truly found Robles to be 51% at fault, but thought, albeit erroneously, that the court might still award her some dam-

fore, rule 606(b) operates in cases such as this to "[e]xclude[ ] . . . testimony that a juror . . . was confused about the legal significance of the jury's answers to special interrogatories. . . ." 6 Weinstein ¶ 606[04] at 606-33 through 606-35 (footnotes omitted).

We thus conclude that the only evidence that the jury misunderstood its instructions is deemed incompetent and inadmissible by rule 606(b), and should not have been heard or considered by the district court. There being no other indication or argument that the jury's first verdict was deficient in any respect, rule 58(2) commands that judgment be entered on that verdict in favor of Exxon.

IV.

Because the district court erred by considering juror testimony barred by rule 606(b) and refusing to enter judgment on the first verdict, the judgment of the district court is REVERSED, and judgment is RENDERED on the first verdict that Robles take nothing.

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ages if the jury were unable to decide on a figure for damages. Of course, in this situation, the jury's general inclination to "give [Robles] some money" is completely irrelevant and does not undermine its verdict; the jury having found Robles 51% responsible, Texas law demands a judgment in favor of Exxon. Alternatively, the testimony could be interpreted to mean that the jury completely ignored the facts of the case, and settled upon the 51% figure for Robles's fault solely because it wished, in keeping with its erroneous understanding of the court's instructions, the court to determine whether to award damages to Robles. This is the interpretation adopted by the district court, and the basis upon which it decided to resubmit the special interrogatories to the jury.

In our view, therefore, these facts present an even stronger case for the application of rule 606(b) than those found in *Peveto*. The process of merely stating the competing interpretations of this testimony, not to mention trying to decide between them, reveals the true nature of the district court's inquiry: an intrusive, and forbidden, search into the jury's "mental processes."

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.A. NO. H-86-943

JOANNE ROBLES,
Plaintiff,

v.

EXXON CORPORATION,
Defendant

(Filed June 1, 1988)

FINAL JUDGMENT

This lawsuit was tried before the Court and jury, the Honorable Woodrow Seals, District Judge, presiding March 28, 1988, March 29, 1988, and March 30, 1988. The issues having been duly tried and the jury having rendered its verdict,

IT IS ORDERED and ADJUDGED that Plaintiff Joanne Robles recover from Defendant Exxon Corporation judgment for $43,579.50, plus 10% pre-judgment interest on $33,558.00 from July 1, 1986 to date of this judgment, plus interest of 10% per year on the amount of $45,579.50 from this date until paid.

It is further Ordered and Adjudged that Plaintiff Joanne Robles recover her cost of Court which are taxed against Defendant Exxon Corporation.

It is Ordered and Adjudged that Plaintiff Joanne

Robles shall have all writs of execution and other process necessary to enforce this judgment.

SIGNED this the 1st day of June, 1988.

/s/ WOODROW SEALS
United States District
Judge Woodrow Seals

APPROVED:

/s/ ROLAND B. DARBY
Roland B. Darby
Fed. Admin. No. 1033
1500 S. Dairy Ashford
Suite 417
Houston, Texas 77077
(713) 558-1300

Attorney for Plaintiff
Joanne Robles

APPROVED AS TO FORM ONLY:

/s/ MICHAEL D. JONES
Michael D. Jones
Fed. Admin. No. 7699
P.O. Box 2180
800 Bell Avenue (77002)
Suite 1895
Houston, Texas 77252-2180
(713) 656-3299

Attorney for Defendant
Exxon Corporation

23.1061

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.A. NO. H-86-943

JOANNE ROBLES,
Plaintiff,

v.

EXXON CORPORATION,
Defendant.

(Filed May 17, 1988)

MEMORANDUM & ORDER

For reasons stated below, Defendant Exxon's Motion to Enter Judgment, filed April 13, 1988, is hereby DENIED. Plaintiff Joanne Robles' Motion to Enter Judgment, filed April 21, 1988, is hereby GRANTED.

PROCEDURAL BACKGROUND

On March 6, 1986, Plaintiff filed a complaint seeking compensation for personal injuries sustained when she fell at Defendant's gasoline station located at 3003 Ella Blvd., Houston, Texas. Defendant filed an answer alleging, in part, that Plaintiff's own negligence contributed to her injuries. In accordance with Texas' comparative negligence statute, Plaintiff cannot recover damages if she is more than 50% at fault. Vernon's Ann. Civ. Prac. & Rem. Code § 33.001.

On March 29, 1988, at approximately 6:00 p.m., after a two-day trial, the six-member jury returned to the courtroom, having answered special interrogatories one through five. The jury determined that both Defendant's and Plaintiff's negligence proximately caused Plaintiff's injuries. The jury further found that Plaintiff was 51% at fault while Defendant was 49% at fault. As noted in Specific Instruction No. 5, the Court then advised the jury that, because of their findings, Plaintiff would not recover. Although all six jurors looked astonished, they did not immediately voice their confusion. The Court excused the jury and directed counsel to enter his chambers. A few minutes later, the bailiff entered chambers and advised the Court that the jury wished to speak with the Court.

The Court reassembled the jury in the courtroom, conducted a brief interview, and determined that all six jurors were confused. Speaking for the other five jurors, the forewoman stated that they believed the Court would determine the amount of damages. When asked by the Court if each juror agreed with the forewoman's statements, each juror nodded his head in assent. After the Court directed the jury to return in the morning, the Court heard arguments by counsel outside the presence of the jury.

On March 30, 1988, having attempted to clarify the jurors' confusion, the Court resubmitted a blank set of the special interrogatories to the jury and requested that they answer all the interrogatories that they cared to answer again.

While the jury deliberated, the Court conducted a short hearing with the bailiff. The bailiff testified to the effect

that the jury had not separated or spoken with any outside parties during the brief interval after returning the first special verdict on March 29th.

At approximately 4:00 p.m. on March 30th, the jury assembled in the courtroom, having answered special interrogatories one through six. They found that Plaintiff was 49% at fault, Defendant was 51% at fault and assessed a total of $85,450.00 in damages.

The Court then excused the jury and directed the clerk to file both of the special verdicts.

LEGAL DISCUSSION

As a general rule, jurors cannot impeach their own verdict. Rule 606(b) of the Federal Rules of Evidence prohibts juror testimony as to (a) any matter or statement during deliberations, (b) the effect of anything upon a juror's mind or emotions, and (c) a juror's mental processes. Fed. R. Evid. 606(b). Thus, the Rule prevents juror harrassment, assures finality of the verdict and guards against fraud by individual ex-jurors. *See Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486, 489 (5th Cir. 1987) (jury verdict upheld despite four juror affidavits describing confusion as to contributory negligence).

However, Rule 606(b) is silent as to juror testimony regarding the accuracy of a verdict. *Attridge v. Cencorp Div. of Dover Technologies Int'l*, 836 F.2d 113, 116 (2nd Cir. 1987) (juror interviews proper to determine unanimous mistake as to whether damage verdict was a net or unadjusted amount). Juror testimony is permissible to show that the verdict actually entered differs from what the jury intended. *Smith v. City of Seven Points*, 608 F. Supp. 458, 462 (E.D. Tex. 1985); *see University*

Computing Co. v. Lykes-Youngstown Corp., 504 F.2d 518, 547-48 n. 43 (5th Cir. 1974). As noted in *Smith*, "all six jurors must agree that the verdict entered differs from what they intended." *Smith*, 608 F. Supp. at 462. On the other hand, a court should not infringe upon the thought processes of the jury by inquiring into how the jury arrived at its verdict. For example, in the *Attridge* case, the court corrected the amount of a judgmeent because jurors mistakenly believed the $150,000.00 verdict represented a net recovery, without subsequent reduction for comparative negligence. The court reasoned that juror interviews "were proper because they were designed to ascertain what the jury decided and not why they did so." *Attridge v. Cencorp Div. of Dover Technologies Int'l*, 836 F.2d 113, 115, 117 (2nd Cir. 1987); *compare, Continental Baking Co. v. Old Homestead Bread Co.*, 476 F.2d 97, 109-110 (10th Cir. 1973) (proper to submit additional interrogatory to clarify juror confusion as to damage award).

In this case, despite statements contained in Specific Instruction No. 5, and apparently through inadvertence, all six jurors were confused about Plaintiff's ability to recover damages. By finding Plaintiff more than 50% at fault, the jurors unanimously and erroneously believed the Court would award damages. *Peveto* and *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579 (5th Cir. 1974), are distinguishable because the juror misunderstandings were not unanimous and there was a greater time delay in the discovery of the mistakes.

By analogy, under Federal Rule of Civil Procedure 49(a), the Court has a duty to attempt to read answers in order to resolve inconsistencies. *Gallick v. Baltimore*

& Ohio R.R. Co., 83 S. Ct. 659, 666 (1963); *see City of Los Angeles v. Heller*, 106 S. Ct. 1571 n.13 (1986) (J. Marshall dissenting). The Seventh Amendment requires that if there is a view of the case which makes the jury's answers to written interrogatories consistent with the general verdict, the Court must adopt that view. *See Morrison v. Frito-Lay*, 546 F.2d 154, 161 (5th Cir. 1977) (additional special interrogatory submitted to clarify inconsistency).

In this case, it is true that the mistake was not apparent on the face of the first verdict. Nevertheless, the mistake was unanimous. Each juror misunderstood the effect of his or her responses to Special Interrogatories 5 and 6. Each believed the Court would enter a damage award. In addition, the delay in discovering this mistake was a matter of minutes. Moreover, the Court had a duty to attempt to resolve this misunderstanding before the jury separated. Therefore, after conferring with counsel, the Court resubmitted the special interrogatories to the jury.

Accordingly, for reasons stated above, the Court hereby grants Plaintiff's motion for entry of judgment. Plaintiff's counsel will prepare a final judgment, secure opposing counsel's signature as to form only and submit the signed final judgment to the Court within fifteen days of the date of this Memorandum & Order.

DONE at Houston, Texas, this 17th day of May 1988.

/s/ WOODROW SEALS
United States District Judge

Supreme Court, U.S.
FILED
APR 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-1381

In The

Supreme Court of the United States

October Term, 1988

JOANNE ROBLES,

Petitioner,

vs.

EXXON CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MICHAEL D. JONES
Suite 1895
800 Bell Avenue
Houston, Texas 77002
Telephone: (713) 656-3299
Attorney for Respondent

March 1989

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether juror testimony should be received after discharge of the jury to explain the verdict unanimously rendered by the jury.

LIST OF PARTIES

The affiliates and partially owned subsidiaries of Respondent Exxon Corporation are listed in Appendix A to this Brief in Opposition.

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No. 88-1381

In The

Supreme Court of the United States

October Term, 1988

JOANNE ROBLES,

Petitioner,

vs.

EXXON CORPORATION

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Respondent, Exxon Corporation, hereinafter "Exxon", respectfully prays this Court to deny Petitioner's, JoAnne Robles', hereinafter "Robles", Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, hereinafter "Petition for a Writ of Certiorari".

OPINIONS BELOW

The Opinion of the Court of Appeals for the Fifth Circuit entered on January 12, 1989 is reported at *Robles v. Exxon Corporation*, 862 F.2d 1201 (5th Cir. 1989) and has been reprinted in the Appendix of the Petition for a Writ of Certiorari.

RULES INVOLVED

Fed. R. Evid. 606(b), 28 U.S.C.A.

Inquiry into validity of verdict or indictment.

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Fed. R. Civ. P., Rule 58 (2)

Entry of Judgment

Subject to the provisions of Rule 54(b):

. . . . . (2) upon a decision granting other relief, or upon a special verdict or a general verdict accompanied

by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

COUNTER STATEMENT OF THE CASE

Petitioner's lawsuit was tried before a jury on March 28 and 29, 1988. After both parties rested, the court read the Charge of the Court to the jury. The charge was prepared by the court and no objection was raised by plaintiff's or defendant's attorneys.

Several hours later, the jury announced that it had reached a verdict. The court assembled the jury, the parties, and the attorneys in the courtroom to receive the verdict. The jury forewoman stated for the record that the jury had reached a unanimous verdict and that she had signed the verdict form indicating the jury's decision. The court then asked the entire panel to indicate whether this was their verdict. All panel members nodded affirmatively.

The clerk of the court took the jury form from the forewoman and read the verdict into the record. The jury found that both Robles and Exxon were negligent and that said negligence was the proximate cause of the injuries to Robles. The jury found Robles 51% negligent and Exxon 49% negligent. The jury did not specify any dollar amount for damages. Having received this verdict, the

court restated to the jury, as was indicated in the Charge of the Court, that Robles would take nothing.

The court discharged the jury stating: "Now you may talk about this case now to anybody you want to, the lawyers or anybody else, but you don't have to talk to anybody. But you may. So now you are excused." The individual jurors then left the courtroom to go their way. The court requested that the attorneys come to chambers. While in chambers, the marshall/bailiff entered and stated that the jury had apparently misunderstood the charge. The court requested the marshall to bring the jury back into the courtroom. The judge conducted an interview of the members of the panel.

The judge specifically told the panel, "You are going to have to tell us what the misunderstanding was." The jurors were not sworn and no questions were permitted by either attorney. Various members of the panel, in answer to the judge's questions, explained what they meant to do with their verdict.

The jury stated that they interpreted the charge to mean that if they found the Plaintiff 51% negligent, the judge would award damages instead of them. The jury came to this conclusion despite the fact that the charge specifically stated twice that a finding of more than 51% negligence on the part of the plaintiff would preclude her recovery.

After hearing this evidence and over the objection of Exxon, the court requested that the jury re-deliberate beginning the next morning. Following re-deliberations, the jury found Robles 49% negligent and Exxon 51% negligent and assessed damages against Exxon.

Exxon moved the court to enter judgment on the first verdict pursuant to Federal Rules of Civil Procedure Rule 58(2). The trial court refused to do so and entered judgment for Robles on the second verdict.

Exxon appealed. The Fifth Circuit reversed and rendered holding that the trial court should have entered judgment on the first verdict pursuant to Rule 58(2) Federal Rules of Civil Procedure and that the colloquia with the jury was impermissible under Rule 606(b), Federal Rules of Evidence, as had been previously decided by the Fifth Circuit in *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987).

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE CASE AT BAR IS FACTUALLY AND LEGALLY DISTINGUISHABLE FROM THE PRECEDENT CITED BY PLAINTIFF

Although the United States Court of Appeals for the Fifth Circuit admitted that its decision in *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987) was in irreconcilable conflict with the United States Court of Appeals for the Second Circuit decision in *Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc.*, 836 F.2d 113 (2d Cir. 1987), the case at bar is factually distinguishable from both decisions and legally distinguishable from *Attridge*. The causes of action in *Peveto* and *Attridge* were product liability causes of action rather than a negligence cause of action as in the case at bar. In the product liability context of both of these cases, "pure comparative fault" was applicable. That is, the plaintiff's recovery was never

barred only reduced. In *Peveto* and *Attridge,* the juries awarded sums to the plaintiffs allegedly intending that to be the ultimate recovery by the Plaintiffs. These sums were then reduced by application of pure comparative negligence principles.

In the case at bar, the jury found Robles was 51% negligent and consistent with the finding refused to award damages as they were instructed. Later, the jury disclosed their mental processes by explaining their assumptions with regard to this verdict.

The court in *Attridge* found the juror interviews to be proper because the interviews were designed to ascertain what the jury decided and not why they did so. 836 F.2d 113, 117. In the case at bar, the jury allegedly found no damages because the jury believed the judge would award damages if the jury found Robles 51% negligent. In fact, the judge did just that, he found no damages for Robles as required by the Texas comparative negligence statute, § 33.001, V.T.C.A. Civil Practice and Remedies Code. In the case at bar, the judge inquired into "why" the jury decided what they did. The Second Circuit would prohibit this inquiry, as well, but would allow testimony on what the jury decided.[1]

---

[1] See *United States Football League v. National Football League,* 644 F.Supp 1040 (S.D.N.Y. 1986) where the Court would not allow post trial statements by jurors to the effect that the award of $1.00 in damages would then permit the judge to decide on the damages. Presumably, the Second Circuit in its later opinion in *Attridge* would have distinguished this case from its Circuit if *Attridge* were to apply in a situation such as presented in the case at bar and in the *United States Football League v. National Football League supra.*

In the case at bar, the jury answered five special interrogatories. None of the answers was inconsistent.[2] Barring inconsistencies, the court was required to enter judgment on this verdict and not to return the jury to redeliberate. Rule 58(2) and Rule 49, Federal Rules of Civil Procedure, *Gallick v. Baltimore and Ohio Railroad Company*, 372 U.S. 108, 83 S.Ct. 659 (1963); *Morrison v. Frito-Lay, Inc.*, 546 F.2d 154 (5th Cir. 1977), because it is presumed that the jury acted in accordance with the instructions given them. *Aspen Skiing Company v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *City of Los Angeles, et al. v. Heller*, 476 U.S. 1115 (1986).

In the case at bar, the jurors were polled and discharged. The jurors unanimously agreed that the verdict reported was the verdict agreed upon. The Trial Court erred (1) by refusing to enter judgment on this verdict and (2) electing to hear jurors' post-verdict testimony.

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[2] In question No. 1, the jury was asked to consider the evidence and based upon the evidence to determine if Robles was negligent. The jury answered in the affirmative. In Question No. 2, the jury was asked if this negligence was a proximate cause of her injuries. The jury answered in the affirmative. The third interrogatory asked the jury to determine based on the evidence whether Exxon was negligent. The jury determined Exxon was negligent. The fourth interrogatory asked the jury if Exxon's negligence was a proximate cause of Robles' injuries. Once again the jury answered in the affirmative. Finally, the jury was asked to apportion negligence where it found negligence and proximate cause on both parties. The jury found Robles 51% negligent and Exxon 49% negligent. The jury found Robles slightly more negligent than Exxon.

The case at bar differs from *Attridge* in the latter aspect as well. In *Attridge*, the interviews were conducted *in-camera;* whereas, in the case at bar, the jurors gave unsworn testimony in open court.

The case at bar is sufficiently distinguishable from *Attridge* to raise a significant doubt as to whether the Second Circuit would have ruled any differently than the Fifth Circuit ruled. In *Robles*, the jury found for the Defendant; whereas, in *Attridge*, the jury found for plaintiff and the Second Circuit stated their rationale as ascertaining *what* the jury decided and not *why* they did so. In the case at bar, the inquiry went to why the jurors found Robles 51% negligent and not what the jurors decided. Presumably, the Second Circuit would rule the same way given this question.

Exxon agrees that *Peveto* and *Attridge* are in conflict and Exxon urges the reasoning in *Peveto*. However, the case at bar would have been decided by the Second Circuit in the same manner as decided by the Fifth Circuit. As such, Robles does not have standing to urge this Application for Writ of Certiorari.

II. THIS COURT SHOULD DENY THE APPLICATION FOR WRIT OF CERTIORARI BECAUSE THE REASONING IN *ATTRIDGE* IS FLAWED AND *ATTRIDGE* IS AN ISOLATED DECISION WITHOUT SUPPORT.

A. The reasoning in *Attridge* is flawed.

The reliance by Robles on *Attridge* is misplaced because *Attridge* was erroneously decided. The Second Circuit's decision in *Attridge* cannot be reconciled with the purported reasons to justify inquiry into the juror's

mental processes. The Second Circuit claims to ascertain what the jury decided, not why they decided the way they did.

In *Attridge,* the jury was instructed to find what damages Mr. and Mrs. Attridge had suffered. The jury found they suffered $150,000 in damages.

The next jury questions required the jury to apportion fault, just the opposite of the order of questions in the case at bar. The jury apportioned fault between Mr. Attridge and the Defendants and between the Defendants.

After the jury was polled and discharged, a courtroom deputy learned from two jurors that the jury intended the $150,000 to be the recovery for Mr. and Mrs. Attridge. The trial court conducted *in-camera* interviews with all six jurors. Each agreed that the $150,000 was to be the net recovery after reductions.

The question on the verdict form to the jury was the amount of damages suffered by Mr. and Mrs. Attridge and *not* the amount of damages after reductions. If the jury understood reduction of the verdict, then the jury could have calculated the proper amount. The suggestion of "reduction" was made by the judge in his *in-camera* interviews with the jurors.

The more probable explanation is that prior to those *in-camera* interviews the jury did not understand "reduction" and under New York law the defendant was denied the application of the "pure comparative causation" statue as applied to products liability. The jury was not supposed to know the effect of the reduction. The jury

was to decide the facts and not which party they wanted to win or what amount that party should receive. The jury decided Mr. and Mrs. Attridge suffered $150,000 in damages. This is all they were asked to decide. The use of written interrogatories is designed to elicit fact findings to which the law may be applied as opposed to the introduction of Mr. Prejudice and Miss Sympathy in the general verdict situation. *Skidmore v. Baltimore & O. R. Co.*, 167 F.2d 54 (2d Cir. 1948).

In the latter case, the court refused to reverse the trial court's reliance on the general verdict which the Second Circuit characterized as result oriented, but clearly expressed its preference for the use of interrogatories. The use of interrogatories prevents the jury from ignoring the law and preserves the equal application of the law to all parties before the court.

In *Attridge*, Cencorp was denied the application of the comparative negligence law of New York. The trial judge did not determine if the jurors knew that damages would be reduced or not. It is conceivable that the jurors believed Mr. & Mrs. Attridge would be made "whole" by an award of $150,000. Under the law of New York, Mr. Attridge's negligence "takes" some of this award away. The New York Legislature made this decision, but the Second Circuit allowed the jury to override that legislative decision in this instance. When the jury determined that Robles was more negligent than Exxon in the case at bar, Texas law dictated the result that she receive nothing even if the jury wanted Robles to receive some money.

The Fifth Circuit did not allow the jury to override the Texas Legislature in this instance or in *Peveto*. The

statute providing that a plaintiff cannot recover in a simple negligence action if the plaintiff is more negligent than a single defendant was allowed to operate in this case. Tex. Civ. Prac. & Rem. Code § 33.001.

The Fifth Circuit in reviewing the legislative history of Rule 606(b) noted that there are only two situations where juror testimony is allowed and neither was present in this case. Those two situations are the improper receipt by the jury of extraneous prejudicial information or the imposition of an outside, improper influence on a juror to influence his/her decisions. These two exceptions deal with material not addressed in the courtroom, material not subject to cross examination, tests of relevancy, materiality or authenticity.

In the case at bar, there are no allegations that extraneous prejudicial information was improperly brought to the jury's attention, nor are there allegations that jurors were threatened or bribed. Rule 606(b) is clear that testimony by these jurors should not have been elicited.

Nor is a distinction made in Rule 606(b) for unanimity of the jurors. The trial court in the case at bar attempts to distinguish *Attridge* from *Peveto* by stating that in both *Attridge* and the case at bar the jurors were unanimously mistaken as to the effect of their verdict. Similarly, the trial court attempted to distinguish the case at bar from *Peveto* and *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579 (5th Cir. 1974) by indicating that in both of those cases several days passed before juror disagreement with the verdict appeared; whereas, disagreement occurred within minutes of the verdict in the case before the Court. The Fifth Circuit rejected this argument as well noting that

the applicability of Rule 606(b) is determined solely by the nature of the testimony and not the unanimity or timeliness of the juror testimony.

The two exceptions to the receipt of juror testimony, extraneous prejudicial information and improper influences brought to bear on jurors, are, as noted above, necessary subjects of inquiry to insure the integrity of the trial system. Any other exceptions open the door to endless inquiry into the jury's decisional process.

This Court in its recent decision in *Tanner v. United States*, 107 S. Ct. 2739 (1987) reviewed the legislative history behind Rule 606(b). At the time Rule 606(b) was being considered by Congress, two versions were in existence. One was the current version based on the common law rule while the other permitted inquiry into juror misconduct during deliberations. Congress specifically understood, considered, and rejected the version of Rule 606(b) that would have allowed jurors to testify on juror conduct during deliberations including misinterpretation of instructions, or intoxication as alleged in *Tanner*. See *Smallwood v. Pearl Brewing Co.*, supra, at 602 n.30, cert. denied, 419 U.S. 873, where the Fifth Circuit stated that "(W)hether or not the jury misunderstood the charge of the court is not a question to be reexamined after the verdict has been rendered."

B. *Attridge* is an isolated decision without support.

Robles would have this Court believe that the Circuits are evenly divided on the issue of what testimony

can be elicited from jurors and what testimony cannot be elicited. Exxon's research has found only the *Attridge* case on the Circuit Court level for the proposition that Rule 606(b) permits juror testimony to determine what the jury decided and not why the jury decided what they did. Of fifty-one (51) opinions by the United States Circuit Courts of Appeals involving juror testimony addressed by Rule 606(b), only *Attridge* allowed this inquiry. Thirty-six of these cases were criminal cases. Eight of the criminal cases allowed juror testimony under one of the exceptions contained in the rule, i.e. extraneous prejudicial information or outside influence. See *Davis v. United States*, 865 F.2d 164 (8th Cir. 1988); *Stockton v. Commonwealth of Virginia*, 852 F.2d 740 (4th Cir. 1988); *United States v. Buckhanna*, 787 F.2d 230 (7th Cir. 1986); *United States v. Green*, 779 F.2d 1313 (7th Cir. 1985); *United States v. Serido*, 705 F.2d 459 (6th Cir. 1982) (unpublished); *United States v. Greer*, 620 F.2d 1383 (10th Cir. 1980); *United States v. Bohr*, 581 F.2d 1294 (8th Cir. 1978); *United States v. Moten*, 582 F.2d 654 (2d Cir. 1978).

Twenty-five of the criminal cases did not allow juror testimony whether it involved jurors pressuring other jurors, to mistakes in interpreting instructions, to love letters to the prosecutor or to partial deafness. See *United States v. Arpon*, 861 F.2d 164 (8th Cir. 1988); *United States v. Sjeklocha*, 843 F.2d 485 (11th Cir. 1988); *United States v. Casamayor, et al.*, 837 F.2d 1509 (11th Cir. 1988); *United States v. Ford*, 840 F.2d 460 (7th Cir. 1988); *United States v. Murphy*, 836 F.2d 248 (6th Cir. 1988); *Shillcut v. Gagnon*, 827 F.2d 1155 (7th Cir. 1987); *United States v. Miller*, 806 F.2d 223 (10th Cir. 1986); *United States v. Shackelford*, 777 F.2d 1141 (6th Cir. 1985); *United States v. Widgery*, 778 F.2d

325 (7th Cir. 1985); *United States v. Pflaumer*, 774 F.2d 1224 (3rd Cir. 1985); *Gov't of Virgin Islands v. Nicholas*, 759 F.2d 1073 (3rd Cir. 1985); *Abatino v. U. S.*, 750 F.2d 1442 (9th Cir. 1985); *United States v. Gross, et al.*, 745 F.2d 58 (6th Cir. 1984)(unpublished); *United States v. Garcia*, 732 F.2d 1221 (5th Cir. 1984); *United States v. Davila, et al.*, 704 F.2d 749 (5th Cir. 1983); *United States v. Brooks*, 677 F.2d 907 (D.C. Cir. 1982); *United States v. Beltempo, et al.*, 675 F.2d 472 (2d Cir. 1982); *United States v. Bassler, et al.*, 651 F.2d 600 (8th Cir. 1981); *United States v. Horton, et al.*, 646 F.2d 181 (5th Cir. 1981); *Singleton v. City of New York, et al.*, 632 F.2d 185 (2d. Cir. 1980); *United States v. Jelsma*, 630 F.2d 778 (10th Cir. 1980); *United States v. Duzac*, 622 F.2d 911 (5th Cir. 1980); *United States v. D'Angelo*, 598 F.2d 1002 (5th Cir. 1979); *United States v. Hockridge, et al.*, 573 F.2d 752 (2d. Cir. 1978); *United States v. Eagle*, 539 F.2d 1166 (8th Cir. 1976); *Gov't of Virgin Islands v. Gereau, et al.*, 523 F.2d 140 (3rd Cir. 1975).

The Fifth Circuit has allowed juror testimony to clarify what was decided as being different from the verdict delivered in open court. *United States v. Dotson*, 817 F.2d 1127 (5th Cir. 1987). After jurors telephoned and spoke with the judge, the court *sua sponte* amended jury verdict to reflect acquittal on one of ten counts. See also *Young v. United States*, 163 F.2d 187 (10th Cir. 1947), cert denied 323 U.S. 770 (cited by Robles).

In two cases, one criminal and one civil, juror testimony was permitted because the testimony went to the fact that the jurors lied on *voir dire*. The testimony did not involve inquiry into the deliberations of the jury. *United States v. Perkins*, 748 F.2d 1519 (11th Cir. 1984) and *Hard v. Burlington Northern Railroad*, 812 F.2d 482 (9th Cir. 1987).

In the fifteen remaining civil cases, no juror testimony was allowed to explain the verdict or how damages were calculated except *Attridge. Robles v. Exxon, supra, Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc., supra. Sims Crane Service, Inc. v. Ideal Steel Products, Inc.,* 800 F.2d 1553 (11th Cir. 1986); *Peveto v. Sears, Roebuck & Co., supra, Ohanian v. Avis Rent-A-Car System Inc.,* 779 F.2d 101 (2d Cir. 1985); *Michaels v. Michaels,* 767 F.2d 1185 (7th Cir. 1985); *Multiflex, Inc. v Samuel Moore & Company, et al.,* 709 F.2d 980 (5th Cir. 1983); *Scogin v. Century Fitness,* 780 F.2d 1316 (8th Cir. 1985); or juror misconduct in disregarding instructions or pressuring other jurors, *Helm v. Bunch, et al.,* ___ F.2d ___ (6th Cir. 1989)(unpublished); *Maldonado v. Missouri Pacific Railway Company,* 798 F.2d 764 (5th Cir. 1986); *Audette v. Isaksen Fishing Corp.,* 789 F.2d 956 (1st Cir. 1986) and *Martinez v. Food City,* 658 F.2d 369 (5th Cir. 1981).

In two cases testimony on extraneous prejudicial information was allowed, *Stephens v. South Atlantic Canners, Inc., et al.,* 848 F.2d 484 (4th Cir. 1988) and *Haley et al. v. Blue Ridge Transfer Co., Inc.,* 802 F.2d 1532 (4th Cir. 1986) and in one case the parties stipulated to receiving juror testimony to explain the verdict. *E. F. Hutton & Company, Inc. v. Arnebergh,* 775 F.2d 1061 (9th Cir. 1985).

The cases cited by Robles or the trial court either involved no jury interviews, *Smith v. City of Seven Points,* 608 F. Supp. 458, 462 (E. D. Tex. 1985) or involved inquiry before the jury was discharged *Continental Baking Co. v. Old Homestead Bread Co.,* 476 F.2d 97 (10th Cir. 1973).

The situation presented in the case at bar would be an inquiry into "why" and not into what was reported in

the courtroom. To allow an inquiry as urged by Robles, would open the flood gates of appeals. All of the public policy reasons for preventing such inquiry in the first place would be swept aside and few, if any, verdicts would be final. *Tanner v. United States, supra, United States v. Chereton*, 309 F.2d 197 (6th Cir. 1962), cert. denied 366 U.S. 924, 978.

In any event, there are other less intrusive mechanisms to address any perceived problems. For example, in *Nissho-Iwai Company, Ltd. v. Occidental Crude Sales*, 729 F.2d 1530 (5th Cir. 1984), the jury returned its verdict and answers to special interrogatories awarding the plaintiff damages on the contract cause of action, no actual damages on the fraud cause of action, but punitive damages on the fraud cause of action. The trial judge recalled the jury and asked them if they knew that actual damages must be awarded before punitive damages are proper. The foreman said that he did not know that, and the judge sent the jury back to the jury room for further deliberation. The jury returned with a finding of actual damages. Plaintiff and defendant both moved for judgment on the respective verdicts, but before ruling on either, the court *sua sponte* declared a mistrial and ordered a new trial.

In the case at bar, Robles could have filed a motion for new trial had the law been researched and recognized that the juror testimony elicited in this case was a violation of Rule 606(b). One may ask why Robles would move for a motion for a new trial where the trial judge indicated his intent to enter judgment on a verdict favorable to the plaintiff. Even though the judge was offering Robles's counsel a bite from this "second verdict apple",

he, unlike Eve, should not have bitten from the forbidden fruit but should have urged an entry of judgment on the first verdict and moved for a new trial within the appropriate time limits. Ignorance of the law is no excuse. In this case, the Fifth Circuit has been clear in its pronouncements on this issue. The jurors' mistake as to the instructions or the effect of their answers on the law is not an area of inquiry once the jury has been discharged. *Smallwood v. Pearl Brewing Co., supra; Chicago, Rock Island & Pacific Railroad v. Speth,* 404 F.2d 291, 295 (8th Cir. 1968); *McNulty v. Borden Inc.,* 542 F.Supp. 655 (E.D. Pa. 1982).

CONCLUSION

In the first instance, *Robles* is distinguishable from *Attridge,* upon which the plaintiff relies. *Robles* is neither *Peveto* nor *Attridge,* the two cases in conflict. *Robles* is a much clearer case than either of those cases, according to the Fifth Circuit, in that *Robles* does not involve what was decided but why it was decided. As such, it must be questioned whether *Robles* has proper standing to urge this conflict between the Fifth, Sixth and Eighth Circuits on the one hand and the Second Circuit on the other.

Secondly, Exxon urges this court to deny this Petition for Writ of Certiorari because the Fifth Circuit's decision correctly interprets Rule 606(b) and recognizes all of the many policy reasons for not inquiring into the jurors' mental processes in arriving at a verdict. All of the cases in which juror testimony has been received are distinguishable from the case at bar. These cases either involved conflicting answers to special interrogatories,

which is addressed by Rule 49, Federal Rules of Civil Procedure, receipt of testimony before the jury was discharged, which is not prohibited by Rule 606(b), testimony limited to the two exceptions to Rule 606(b), and finally, receipt of testimony in limited circumstances to determine *what* the jury decided as opposed to *why* they reached the verdict reported in open court. Based on the above and foregoing, Respondent, Exxon Corporation, moves this Court to deny Robles' Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

/s/ Michael D. Jones
MICHAEL D. JONES
Attorney in Charge
Fed. Admin. No. 7699
P. O. Box 2180, Suite 1895
800 Bell Avenue (77002)
Houston, Texas 77252-2180
(713) 656-3299
Attorney for Respondent
Exxon Corporation

APPENDIX

EXXON CORPORATION

Affiliates and Subsidiaries – Not Wholly-Owned*

Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Aircraft Fuel Supply B. V.
Aishin Sekiyu K. K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
Asakawa Sekiyu K.K.
Asociacion Civil "Colegio Internacional de Caracas"
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
BEB Erdgas und Erdol GmbH, Hannover
BT Asia Securities Limited
B.W.O.C., Inc.
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
Bel-Air Entreposage S. A.
BRIGITTA Erdgas und Erdol GmbH, Hannover
Bryan Woodbine Gathering Inc.
Byron Creek Collieries (1983) Limited

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*Does not include companies with less than 5% Exxon Ownership.

Carlew Inc.
Carnduff Gas Limited
Cary Chemicals Inc.
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Commercial Polymers Pty. Ltd.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oxonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
DFTG Deutsche Flussigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Demulsificantes Del Orinoco, C.A.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdol GmbH, Hannover
Elwerath Erdol und Erdgas AG
Emirates Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Entrepot Petrolier de Mulhouse (E.P.M.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Esso Chemical Alberta Limited
Esso Energie G.I.E.

Esso Exploration and Production Angola Inc.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Resources N.W.T. Limited
Esso Resources Ventures Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Etablissements Cloarec
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
489061 Ontario Inc.
F. T. Giken Kabushiki Kaisha
F.T. Shyoji K.K.
Federated Pipe Lines Ltd.
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forjas de Colombia, S. A.
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane - Lavera
Gewerkschaft Brassert Erdol und Erdgas GmbH
Gewerkschaft Elwerath & Co. GmbH
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gewerkschaft Gute Hoffnung Erdgas und Erdol GmbH
Gewerkschaft Kuchenberg Erdgas under Erdol GmbH
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier de la Cote D'Azur
Groupement Petrolier de Nantes
Groupement Petrolier du Finistere G.I.E.

Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K.K.
Home Energy Company Ltd.
Home Oil Company Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industry Promotion Enterprises Limited
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line (NW) Ltd.
Interhome Energy Inc.
Intamix Corporation
Intoplane Service Company Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Agency
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Marutaka Sekiyu

K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Standard Sekiyu K.K.
Kowa Sekivu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzernisches Erdol
Les Docks des Petroles d'Ambes
Long Beach Oil Development Company
Maasvlakte Coal Terminal B.V.
Maasvlakte Olie Terminal N.V.
Magota Sekiyu K.K.
Mainline Pipelines Limited
Maple Leaf Petroleum Limited
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Metro Fuel Co. Ltd.
Mikawa Bussan K.K.
Minerals Limited

Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter
Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
Mr. Lube Canada Inc.
Mytex Polymers Incorporated
NAM - K 7 B.V.
NAM - K 14 B.V.
NAM - K 15 B.V.
NAM/CLOMS - K 8/K 11 B.V.
NAM/CLOMS - L 13 B.V.
N. V. Nederlandse Gasunie
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Nottingham Gas Limited
107580 Canada Inc.
151742 Canada Inc.
158883 Canada Inc.
159129 Canada Inc.
160837 Canada Limited
Office Prive d'Assurances et de Courtages

Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)
Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Osaka Ashyu Nenryou K.K.
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.
P.A.C. S.A.R.L. (Pinson Allegret-Causse)
P. T. Stanvac Indonesia
Pars Investment Corporation –
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafeh-Harburg GmbH
Portland Pipe Line Corporation
Primaer Oel GmbH
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S. A.
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)
Rotterdam-Antwerpen Pijpleiding (Nederland) N. V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)
S.A.R.L. Viain
SEAG Aktiengesellschaft fur schweizerisches Erdol
S.0.P. - Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S. A.

Saudi Arabian Lube Additives Company Limited
Schubert KG
Scurry-Rainbow Oil Limited
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de Gestion de Stocks de Securite (SAGESS)
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar" PROLUMA S.A.
Societe Belge de Transport par Pipeline
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de la Raffinerie de Lorraine
Societe de Manutention de Carburants Aviation (S.M.C.A.)

Societe de Manutention de Carburants Aviation Dakar-Yoff, S. A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe Francaise Exxon Chemical
Societe "Geomines-Caen"
Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Sun East Company Ltd.
Sydis, Inc.
Syncrude Canada Ltd.
Synergistics Industries Limited
System Plaza Kabushiki Kaisha
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.

Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Takahama Kosan Kabushiki Kaisha
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecnica Quimica Petrolera, S.A. de C. V.
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.
Toko Sekiyu K.K.
Tonen Energy and Marine (Singapore) Pte. Ltd.
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Properties Inc.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Tonex Company Limited
Tophus Quen Pty. Ltd.
Towa Compounding Co. Ltd.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG - Unterflurbetankungsanlage Flughafen Zurich
United Industry Development Co., Ltd.
Van Salt Water Disposal Company
W.A.G. Pipeline Proprietary Limited

Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Winnipeg Pipe Line Company Limited
Worex S.N.C.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshiki Sekiyu Kabushiki Kaisha
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Bosai Center